

**Before the
Federal Communications Commission
Washington, D.C. 20554**

| | | |
|---|---|------------|
| In the Matter of |) | |
| |) | |
| Comcast Cable Communications, LLC |) | CSR 8230-E |
| |) | CSR 8231-E |
| Petitions for Determination of Effective |) | CSR 8235-E |
| Competition in various Pennsylvania Franchise |) | |
| Areas |) | |

MEMORANDUM OPINION AND ORDER

Adopted: May 18, 2010

Released: May 19, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Comcast Cable Communications, LLC, hereinafter referred to as “Petitioner,” has filed with the Commission petitions pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable systems serving the communities listed on Attachment B and hereinafter referred to as Group B Communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and are therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”), and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Community listed on Attachment C and hereinafter referred to as the Group C Community because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(1) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that the Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence to support its assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petitions at 3.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petitions at 4-5 (CSR 8230-E and CSR 8231-E) and at 5 (CSR 8235-E).

¹²*See* Petitions at Exhibit 2 (CSR 8230-E and CSR 8231-E) and at Exhibit 1 (CSR 8235-E).

¹³*See* Petitions at 3-4.

¹⁴*Id.* at 7. With regard to CSR 8230-E and CSR 8231-E, we note that the same franchise areas reflecting the same DBS penetration rates are listed in both petitions. Two petitions were filed, however, because the franchise areas are served by two headends: PSID No. 006485 (PA2165, PA0225 and PA0228) and PSID No. 001871 (PA0105). In this situation, the filing of two separate petitions and two separate filing fees is required.

determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code plus four basis.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

¹⁵Petitions at 5-7 (CSR 8230-E and CSR 8231-E) and at 5-8 (CSR 8235-E).

¹⁶Petitions at 7, Exhibit 7 (CSR 8230-E and CSR 8231-E) and at 7-8, Exhibit 6 (CSR 8235-E).

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Comcast Cable Communications, LLC, **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **ARE REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A**CSR 8230-E, CSR 8231-E & CSR 8235-E****COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC****CSR 8230-E**

| Communities | CUID(s) |
|--------------------|----------------|
| Conoy | PA2165 |
| Elizabethtown | PA0225 |
| Marietta | PA0228 |

CSR 8231-E

| | |
|------------|--------|
| Mountville | PA0105 |
|------------|--------|

CSR 8235-E

| | |
|----------------|--------|
| East Pennsboro | PA0425 |
| Penbrook | PA0437 |
| Royalton | PA0896 |
| Rye Township | PA3237 |
| Steelton | PA0438 |

ATTACHMENT B

CSR 8230-E, CSR 8231-E & CSR 8235-E

COMMUNITIES SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

| Communities | CUID(s) | CPR* | 2000 Census Households | Estimated DBS Subscribers |
|-------------------|---------|--------|------------------------------|---------------------------------|
| CSR 8230-E | | | | |
| Conoy | PA2165 | 25.57% | 1,103 | 282 |
| Elizabethtown | PA0225 | 17.40% | 4,271 | 743 |
| Marietta | PA0228 | 19.69% | 1,092 | 215 |
| CSR 8231-E | | | | |
| Mountville | PA0105 | 22.79% | 1,018 | 232 |
| CSR 8235-E | | | | |
| East Pennsboro | PA0425 | 17.28% | 7,475 | 1,292 |
| Penbrook | PA0437 | 17.21% | 1,307 | 225 |
| Royalton | PA0896 | 16.46% | 395 | 65 |
| Steelton | PA0438 | 18.73% | 2,312 | 433 |

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR 8235-E

COMMUNITY SERVED BY COMCAST CABLE COMMUNICATIONS, LLC

| Community | CUID | Franchise Area Households | Cable Subscribers | Penetration Percentage |
|--------------|--------|------------------------------|----------------------|---------------------------|
| Rye Township | PA3237 | 850 | 3 | 0.35% |